

CRIMINAL APPEAL No. 313 OF 1993

WITH

CRIMINAL APPEAL No. 346 OF 1993

(In the matter of appeals under Section 374(2) of the Code of Criminal Procedure against the judgment of conviction dated 10.09.1993 and order of sentence dated 14.9.1993 passed by Sri R.C. Srivastava, Sessions Judge, Darbhanga in Session Trial No. 76 of 1991)

1. LALO MANDAL, SON OF SRI MANGAL MANDAL, RESIDENT OF MOHALLA BELLADULA, P.S.- LALIT NARAYAN MISHRA UNIVERSITY, DISTRICT DARBHANGA.
2. MANOJ SONAR, SON OF SRI SOBI THAKUR, RESIDENT OF MOHALLA BELLADULA, P.S.- LALIT NARAYAN MISHRA UNIVERSITY, DISTRICT DARBHANGA

..... **APPELLANTS (in Cr. App. No. 313/1993)**

VERSUS

THE STATE OF BIHAR..... **RESPONDENT (in Cr. App No. 313/1993)**

WITH

MAHESH THAKUR, SON OF LATE JUGAL THAKUR, RESIDENT OF MOHALLA CHUNA BHATTI, P.S. L.N. MITHILA UNIVERSITY, DISTRICT DARBHANGA

..... **APPELLANT (in Cr. App. No. 346/1993)**

VERSUS

1. THE STATE OF BIHAR
2. SURESH PRASAD MEHTA, SON OF LATE RAJESHWAR PRASAD MEHTA, VILLAGE GANGWARA, P.S. SADAR, DISTRICT DARBHANGA

..... **RESPONDENTS (in Cr. App. No. 346/1993)**

FOR THE APPELLANT (IN CR. APP. 313/93) :- MR. AMIT KUMAR, ADVOCATE
MR. AMIR ALAM, ADVOCATE

FOR THE APPELLANT (IN CR. APP. 346/93) :- MR. ARUN KUMAR TRIPATHI,
AMICUS CURIAE

FOR THE STATE (IN BOTH APPEALS) :- MR. JHARKHANDI UPADHYAY
A.P.P.

P R E S E N T

THE HON'BLE JUSTICE SMT. SHEEMA ALI KHAN

S. A. Khan, J.

There are three appellants namely Lalo Mandal and Manoj Sonar in Cr. Appeal No. 313 of 1993 and Mahesh Thakur in Cr. Appeal No. 346 of 1993 who have been convicted under Section 395 of the Indian Penal Code to undergo R.I. for 7 years.

2. The prosecution case in brief is that the occurrence took place on 22.4.1990 at about 2 a.m. in the morning. The informant Suresh Prasad Mehta, PW 9 was sleeping in his house when he realized that several persons were present in his house. He saw that some unknown persons who had covered their faces had entered into the room of his wife and his son PWs. 7 and 8 variously armed and were committing dacoity. The informant claims to have identified Lalo Mandal and Manoj Sonar and alleges that Lalo Mandal and Manoj Sonar were in the room of his son PW 8 and there was a scuffle between them. He also claims to have identified Mahesh Thakur. It is said that two persons were injured in the said occurrence. One is Rajgir Yadav, PW 2 and the other is Suresh Yadav, PW 1.

3. PWs. 2, 4 and 6 have been tendered for cross examination. It may be stated here that PW 2, Rajgir Yadav who was injured witness in the said occurrence has not disclosed the names of any of the dacoits. According to the prosecution case on Hulla several villagers gathered at the

place of occurrence and had chased the dacoits. The police arrived at the spot almost immediately after the occurrence.

4. PW 1 Suresh Yadav is said to be an injured in the said occurrence. He claimed that he is a labourer had come to unload the coal from a truck. This aspect of the case was not supported in his evidence as neither the truck was found at the place of occurrence nor was the driver etc. present at the time when the occurrence took place. PW 1 Suresh Yadav further stated that after unloading the truck he had left for his home at 10 p.m. which is in conflict with the case made out in the Chief wherein he states that he was assaulted during the occurrence and he claims that he also identified the three appellants. Another aspect which makes the evidence of PW 1 unbelievable is the fact that he states in Court that he was taken by the police party to the hospital immediately after the occurrence, whereas the injury report indicates that he was presented for examination before the doctor on the next morning i.e. on 22.4.1990 at 10 a.m. According to this witness Mahesh Thakur owns a furniture shop in the village whereas Lalo Mandal works in the Forest Department. He denies the suggestion that he has been instigated by the informant and one Rajdev Thakur an advocate with whom the co-accused are on litigating terms to name the appellants. This Court finds that the very presence of PW 1 doubtful in view of the contradictory statements

made by him, regarding his presence at the time of the occurrence. The fact that he was injured and was unconscious due to the injury and taken to the hospital the same night is falsified by the doctor's evidence. The injuries of PW 1 are said to be superficial in nature. No cross examination has been made regarding the fact that the injuries are superficial in nature. At the most it may be said that he came to the place of occurrence and he was assaulted by unknown persons and as a result of which he received the injury. However, his evidence with respect to the presence of the appellant, in view of the fact that there are co-villagers and are well known seems to be unbelievable. He was examined by the Investigating Officer after two days of the occurrence, which fact also leads this Court to doubt his version of the occurrence.

5. The Court will next examine the evidence of Hari Shankar Mishra, PW8 the son of the informant and Suresh Prasad Mehta, PW 9. According to PW 8, he claims in his Chief that he identified the appellants whereat at paragraph 3 he states that he does not know the appellants by name, rather the persons of Nabtolia, who had arrived at the time of the occurrence had disclosed the names of this witness. Therefore, the identification of the appellants by this witness is on the basis of hearsay statement of some unknown person of Nabtolia and as such not much credence

can be given to the evidence of PW 8. PW 8 tries to explain the identification of the appellants by saying that he was able to identify the appellants after their arrest on the same night. This part of the evidence cannot be believed in view of the fact that the Investigating Officer has stated that he arrested the appellants from a tea shop which is at some distance from the place of occurrence and it is not indicated by the Investigating Officer or by any other witness that the informant and PW 8 were present at the time when the arrest was made. As such the court cannot believe the evidence of PW 8 with respect to identification of the appellants.

6. The informant PW 9 Suresh Prasad Mehta has stated that he identified only Manoj Sonar and Lalo Mandal in the said occurrence. Regarding the identification made on behalf of PW 9, it has been suggested that because he is Sonar therefore, he had some business dealings with Manoj Sonar and being aggrieved by them he has implicated Manoj Sonar in this occurrence. With respect to the identification of the appellants by PW 9, learned counsel for the appellants submits that there is difference between the First Information Report and statement made in the Court. In the First Information Report PW 9 states that all the dacoits had covered their faces with 'Gamchha' wherein in Court he has improved the case by saying that he could identify the appellants because the 'Gamchha' of the appellants had

fallen down. The attention of the Investigating Officer was drawn to the statement made by PW 9 regarding this aspect of the identification. PW 10 the Investigating Officer has clearly stated that PW 9 had not disclosed before him that he was able to identify the appellants because the 'Gamchha' had fallen down during the occurrence. Learned counsel for the appellants further submits that all the appellants are co-villagers, a suggestion has been given that there is enmity between Mahesh Thakur and his uncle Rajdev Thakur who is an advocate and there are criminal and civil cases pending between them i.e. Mahesh Thakur and Rajdev Thakur and it is for this reason that at the behest of Rajdev Thakur that Mahesh Thakur has been named as one of the persons who participated in the occurrence.

The evidence of the witnesses i.e. PW 1 Suresh Yadav, PW 9 Suresh Prasad Mahto, PW 8 son of the informant Harishankar reveals that the identification of the appellants in the facts stated aforesaid are doubtful. All the three appellants are co-villagers, one of them Suresh Thakur is a businessman having a furniture shop. Lalo Mandal who works for the Forest Department and Manoj Sonar were all known to the villagers and thus it appeared that their names have been dragged in this case due to enmity. Surprisingly not a single person was arrested, nor the Investigating Officer investigated and tried to find out who were the unknown

dacoits who had participated in the alleged crime. These three appellants were found in the village immediately after the occurrence which also leads this Court to doubt their participation in the said dacoity. Therefore, this Court finds that the evidence of the witnesses does not inspire confidence and as such I find that the prosecution has not been able to prove beyond doubt that the appellants participated in the said dacoity and as such their conviction and sentence are set aside. The appellants are also discharged from the liabilities of the bail bonds furnished earlier in this case.

In the result, these appeals are allowed.

(Sheema Ali Khan, J.)

Patna High Court
September 8, 2009
N.A.F.R. / Sanjay/Anand

